

EDWARD PARTEE, JR.,)
)
Plaintiff,)
)
vs.) Case No. 4:17-CV-2827 AGF
)
ELDERCARE MANAGEMENT)
SERVICES,)
)
Defendant.)

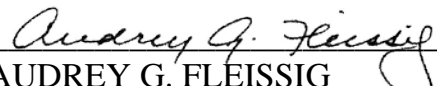
This matter is before the Court on the motions of *pro se* Plaintiff for entry of Clerk's default and for default judgment against the sole Defendant in this case, Eldercare Management Services. ECF Nos. 47, 48.

Plaintiff now argues that default judgment is appropriate against Defendant because Defendant has failed to answer Plaintiff's second amended complaint in a timely

manner. According to Plaintiff, Federal Rule of Civil Procedure 15(3) requires an answer or other responsive pleading to the amended pleading by July 23, 2018, and none has been filed. This is not correct. The Defendant filed a motion to dismiss based on Federal Rule of Civil Procedure 12(b)(6), within the time frame allowed by the Court. Under Federal Rule of Civil Procedure 12(a)(4), serving a motion under Rule 12 alters the time to serve an answer. Defendant's answer is due within fourteen days after notice from the Court of a denial of the motion to dismiss or a postponement of its disposition until trial. Fed. R. Civ. P. 12(a)(4)(A). Because the motion to dismiss is still before the Court, Defendant's answer is not late and default judgment is not appropriate in this case.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motions for entry of clerk's default and for default judgment are **DENIED**. ECF Nos. 47, 48.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 25th day of September, 2018.